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No. 94-114

In The

Supreme Court of the United States

October Term, 1994

JOAN DAVIS,

Petitioner,

v.

NEW JERSEY BELL,

Respondent.

Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

BRIEF IN OPPOSITION

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BRIEF IN OPPOSITION

In her petition for certiorari, petitioner has raised issues not presented below and has misstated the bases of the decisions of the Court of Appeals and the District Court. Certiorari should be denied because:

1) this case does not present any federal question and the petition is based upon issues not presented to or ruled upon by the Court of Appeals.

STATEMENT OF THE CASE

Petitioner filed suit against respondent, her former employer, alleging breach of contract, negligent and

intentional infliction of emotional distress, tortious interference with economic advantage and defamation. Jurisdiction was based upon diversity of citizenship as petitioner relocated to Florida following her termination from respondent's employ. Respondent is a New Jersey corporation.

At the conclusion of a bench trial, the District Court, applying New Jersey law, found a breach of contract but refused to award compensatory damages because petitioner failed to prove that Southern Bell's refusal to hire her was a foreseeable, reasonably certain consequence of respondent's breach of contract. (A. 11a-14a) The Court of Appeals affirmed, citing the "clearly erroneous" standard of Federal Rule of Civil Procedure 52 (a). (A. 5b-7b)

Petitioner's claims were resolved solely upon the basis of state law. No federal question was presented at any stage of the proceedings in this matter. In her petition for certiorari, petitioner points to a Florida statute and to certain sections of the United States Code in an effort to overturn the factual findings of the trial court, affirmed by the Court of Appeals. These arguments were not raised below and do not warrant the granting of a writ of certiorari.

REASON WHY THE PETITION SHOULD BE DENIED

I. This Case Does Not Present Any Federal Question And The Petition Is Based Upon Issues Not Presented To Or Ruled Upon By The Court Of Appeals.

Rule 10.1 provides that this Court will grant certiorari "only when there are special or important reasons therefor." Rule 10.1 describes the type of reasons which ordinarily govern the granting of review on writ of certiorari. None is present in this case.

This case was decided based upon New Jersey law. No federal question was pleaded, argued or decided. This Court has consistently declined to review the judgments of federal courts dealing with issues of state law. As the Court stated in *Butner v. United States,* 440 U.S. 48, 58 (1979), "federal judges who deal regularly with questions of state law in their respective districts and circuits are in a better position than we to determine how local courts would dispose of comparable issues." Unless the federal court's determination of state law is "unreasonable," this Court will not review it. *Propper v. Clark,* 337 U.S. 472, 486-487 (1949). The decision of the Court of Appeals was not unreasonable; to the contrary, it correctly applied the clearly erroneous standard appropriate to the review of the factual findings of the trial court.

The petition suffers from the additional flaw of presenting arguments not raised or considered below. Petitioner seeks reversal in order to advance arguments based upon state and federal statutes which were not asserted at any stage of the proceedings in this case. As Justice Scalia reiterated in *U.S. v. Williams,* ___ U.S. ___, 112 S.Ct. 1735, 1736 (1992), "(t)he Court will not review a

question that was *neither* pressed *nor* passed on below." [emphasis in original] *E.E.O.C. v. Federal Labor Relations Authority*, 476 U.S. 19, 24 (1986).

CONCLUSION

This case does not raise the special or important issues which are a condition prerequisite for the granting of a writ of certiorari. It involves issues of proof, applying New Jersey law. For the foregoing reasons, respondent requests that the Court deny the petition for a writ of certiorari.

Respectfully submitted,

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